IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.528-MA of 2006
Date of Decision: December 08, 2006

Nand Lal son of late Sh.Dittu Ram, resident of Harpal Nagar, Bathinda

.....Appellant

VERSUS

1.Gurdeep Singh, Prop. of Gurdeep Automobiles, resident of Bathinda.

2.Sanjeev Kumar, Prop. Sanjeev Auto Parts, Shop No.10, Zila Prishad Complex, Bathinda.

3.Pawan Kumar Prop. Pawan Auto Shop No.2, Zila Prishad Complex, Bathinda.

4.Sandeep Kumar Verma, Prop. Verma Shokers, Shop No.11, Zila Prishad Complex, Bathinda.

5.Rajesh Jain Prop. Jain Paints, Street No.2, Zila Prishad, Bathinda.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.Manjit Singh, Advocate
for the appellant.

R S MADAN, J.

By this order we propose to dispose of Criminal Misc.No.528-MA of 2006, which has arisen out of the judgment dated 14-07-2006 rendered by the Judicial Magistrate Ist Class, Bathinda in a Criminal complaint case No.47 of 13-9-1999 whereby he acquitted all the

accused under Sections 500 and 506 of the Indian Penal Code by giving them the benefit of doubt.

In brief, the facts of the case are that the complainant along with the respondents-accused was in possession of the shop owned by Zila Prishad Bathinda in which complainant and respondent were doing their respective business. The rent of the shop was being paid by the complainant to Zila Prishad. Gurdeep Singh-respondent, who wanted to dis-possess the complainant from the shop and inconnivance with other accused filed an application in the office of Zila Prishad that the complainant was not himself running the business in that shop and he had sublet the shop to another person. The application was alleged to have been signed by all the respondents including Athru Kumar Gupta, Principal, MHR School, Dharam Pal Singh Gill, Bimal Kumar and Manjit Singh. When these persons were contacted by the complainant, they told that they had not signed any application and their signatures were fabricated. On receipt of the application, the Executive Officer, Zila Prishad issued a notice dated 23-9-1997 to the complainant to clear the position. The complainant contacted the office of the Zila Prishad and cleared the position that he was running the business in the shop and he had never sublet the same. The application was filed by the Office of the Zila Prishad. On this, all the respondents got annoyed and threatened the complainant with dire consequences. The complainant issued a legal notice to the accused through his counsel. On receipt of the notice, all the accused came to the shop of the complainant and pressed him to withdraw the legal notice otherwise they would throw the items lying in his shop. They also

threatened the complainant that they will force him to vacate the shop. After receipt of the threat, the complainant contacted the Kotwali Police but the police did not take any action against the respondents, which led to the filing of the complaint against the accused-respondents in the Judicial Courts, Bathinda. The said complaint was dismissed in default for non-appearance of the complainant on 8-6-1999. All the accused were threatening the complainant to leave the market. They were openly threatening the complainant that they would force him to leave the shop. The complainant filed complaint in this regard before the Senior Superintendent of Police, Bathinda but no action was taken on his complaint.

On the basis of the preliminary evidence, the accused were summoned to face trial for the commission of offence under Sections 500 and 506 of the Indian Penal Code. The respondents appeared and the case was fixed for pre-charge evidence.

To prove its case, the complainant had examined CW1-HC Dalbir Singh; CW2-Satpal Steno, Zila Prishad, Bathinda; CW3-Dharam Pal; PW4-Manjit Singh and himself examined as PW5 and closed the evidence.

After going through the evidence, a prima facie case punishable under Sections 500 and 506 of the Indian Penal Code was made out against the accused, to which they pleaded not guilty and claimed trial. The accused made a statement that they will cross-examine all the witnesses produced by the complainant. After the cross-examination of the witnesses, the complainant closed the evidence.

After the evidence of the complainant was closed, the

statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence was put to them, to which they denied and pleaded false implication.

In defence, the accused had examined DW1-Resham Singh; DW2-Gurdev Singh and closed the defence evidence.

After going through the prosecution as well as defence evidence, the learned Magistrate did not believe the version of the complainant and acquitted the accused-respondents by extending them the benefit of doubt.

Heard.

After evaluating the evidence, the learned Magistrate was of the view that the application sent to SHO, Police Station, Kotwali for enquiry was filed due to the pendency of the present complaint in the Court. The complainant proved that on the basis of the application Ex.C1 moved against Nand Lal, he was asked to explain his position. PW3 was running shop in the Zila Prishad complex clearly stated that he did not move any application against Nand Lal to Zila Prishad, Bathinda. Original application Ex.CW3/B does not bear his signatures. PW4-Manjit Singh followed the line of PW3. It is only PW5-Nand Lal, who made statement as per the averments made in the complaint. The entire controversy had revolved around the application, which was actually the bone of the contention between the complainant and the accused party.

After evaluating the fact, it transpires that tea stall is already in existence in the Zila Prishad Market for the last 15 years. After going through the complaint, it was found that the name of the complainant

does not figure in the complaint specifically with an averment that he has sublet the shop. The allegation of the complainant that the respondents wanted to dis-possess him from the shop in question and for that reason, they have written a letter to the Executive Officer, Zila Prishad does not bring the case within the ambit of Section 499 of the Indian Penal Code because it is the duty of the Zila Prishad to keep a check on the movements of the tenant with respect to any kind of encroachment. The number of shop is also not mentioned in the complaint. In the cross-examination, the complainant admitted that he has no knowledge whether the accused had moved an application against him before the Zila Prishad. No independent witness was examined by the complainant to corroborate the version made in the complaint.

Another averment made in the complaint that several persons had threatened the complainant to dis-possess him from the shop in question is also not proved from the record because the complainant was unable to tell the name of any of the accused, the date and time of threat given by them. Therefore, the complainant has not led any cogent evidence to prove his case that he was ever defamed or threatened with dire consequences.

Learned counsel for the appellant is unable to convince us that the Judicial Magistrate Ist Class, Bathinda misconstrued, mis-interpreted the prosecution evidence and has perversely recorded the findings of acquittal.

In this view of the matter, we do not find any infirmity in the order rendered by the Judicial Magistrate Ist Class, Bathinda.

Therefore, no ground for leave to appeal is made out and the same is hereby dismissed.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

December 08, 2006
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